



[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

Docket No.: FAA-2014-0505; Amdt. No. 13-36

RIN 2120-AK43

Orders of Compliance, Cease and Desist Orders, Orders of Denial, and Other Orders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Immediate final rule; request for comments.

SUMMARY: This rulemaking provides the opportunity for an informal conference with an FAA attorney before an order is issued under the FAA's regulation covering orders other than certificate action and civil penalty orders. This change is necessary to provide additional fairness and process to those persons who are subject to such an order, and is consistent with the process available in other enforcement actions. These conferences may result in either a resolution of the matter or a narrowing of the issues, thereby conserving resources for respondents and the FAA.

DATES: Effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Send comments identified by docket number, FAA-2014-0505 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.
- Mail: Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at 202-493-2251.

Privacy: In accordance with 5 USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical or legal questions concerning this action, contact Edmund Averman, Office of the Chief Counsel (AGC-

210), Federal Aviation Administration, 800 Independence Avenue SW, Washington, D.C.20591; telephone (202) 267-3147; e-mail Ed.Averman@faa.gov.

SUPPLEMENTARY INFORMATION:

Good Cause for Immediate Adoption

Section 553(b)(3)(A) of the Administrative Procedure Act (APA) (5 U.S.C. 553) authorizes agencies to dispense with notice and comment procedures for rules when the agency for “good cause” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking.

The FAA finds that notice and public comment to this immediately adopted final rule are impracticable, unnecessary, and contrary to the public interest. This rulemaking provides the opportunity for an informal conference with an FAA attorney before an order is issued under § 13.20. Since this change provides additional fairness and process to those persons who are subject to such an order, this amendment should not adversely impact those covered by an order. In fact, these conferences may result in a resolution of the matter or, in some cases, a narrowing of the issues, thereby conserving resources for respondents and the FAA. Finally, these conferences are optional.

Therefore, the FAA has determined that notice and public comment are unnecessary.

Comments Invited

For the reasons noted above, the FAA is adopting this final rule without prior notice and public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), provide that, to the maximum

extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice.

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the changes. The most helpful comments reference a specific portion of this rule, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or, if you are filing comments electronically, please submit your comments only one time.

The FAA will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking. Once the comment period closes, the FAA will review and dispose of the comments filed in the rulemaking docket. Because this is a final rule, the FAA will publish a disposition of comments in the Federal Register. Based on the comments received, the FAA will state whether it has decided that (i) no action is necessary other than publishing the disposition of comments in the Federal Register, or (ii) the FAA should prepare a revised final rule.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the FOR FURTHER INFORMATION CONTACT section of this document. Mark the information that is considered proprietary or confidential. If the information is

on a disk or CD ROM, mark the outside of the disk or CD ROM and also identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. The FAA holds it in a separate file to which the public does not have access, and the agency places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, the FAA treats it as any other request under the Freedom of Information Act, 5 U.S.C. 552. The FAA processes such a request under the DOT procedures found in 49 CFR part 7.

Authority for this Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, the FAA is charged with prescribing regulations required in the interest of safety for the design and performance of aircraft; regulations and minimum standards in the interest of safety for inspecting, servicing, and overhauling aircraft; and regulations for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce.

I. Discussion of the Final Rule

Section 13.20 of 14 CFR part 13 (Orders of compliance, cease and desist orders, orders of denial, and other orders) applies to a variety of orders issued by the Administrator to carry out the provisions of the Federal Aviation Act of 1958, as amended, the Hazardous Materials Transportation Act, the Airport and Airway Development Act of 1970, and the Airport and Airway Improvement Act of 1982, or the Airport and Airway Improvement Act of 1982 as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987. This section does not apply to orders issued under the authority of 49 U.S.C. 46301 (assessing civil penalties) or 49 U.S.C. 44709 (amendments, modifications, suspensions, and revocations of certain certificates).

Paragraph (c) of § 13.20 allows, within 30 days after service of the notice, a person subject to an order to reply in writing or request a hearing in accordance with subpart D of part 13. This rule amends that paragraph to add a third option - an opportunity to be heard in an informal conference with an FAA attorney. The FAA has determined that this third option offers additional fairness and process to those persons who would be the subject of an order issued under § 13.20. In addition, since this opportunity is already available to persons subject to certificate actions under § 13.19 and civil penalty actions under §§ 13.16 and 13.18, it makes sense to add it to § 13.20 for consistency and fairness.

Through the mechanism of the informal conference in these other contexts, matters are sometimes resolved or the issues are narrowed. This results in conserving resources, both for respondents and the FAA. The FAA expects these benefits will also be realized for orders issued under § 13.20 when the informal conference option is selected.

This rule also amends paragraph (d) of § 13.20 to provide for these informal conferences. Paragraph (d) currently allows a person who files a reply under paragraph (c) to further request a hearing in accordance with Subpart D of part 13 as to any charges not dismissed or not subject to a consent order. The option to request a hearing is expanded to include persons who requested an informal conference.

Concurrent with the publication of this rule, the FAA is publishing a final rule entitled “Repair Stations.” One of the main purposes of that rulemaking is to amend the certificate application section to provide the FAA with the ability to deny an application for a repair station certificate to an applicant who previously held a repair station certificate that was revoked or who intends to use certain key management personnel or other persons who could exercise control over the repair station’s operations and who had materially contributed to the circumstances that caused a previous repair station revocation. That action is necessary to provide the FAA with the authority to deny a repair station certificate to an applicant who has violated part 145 regulations to an extent that revocation of the certificate was warranted or who intends to use key decision makers who materially contributed to a prior revocation.

During the FAA’s internal review of the Repair Stations final rule, the FAA noted that commenters raised due process issues with respect to how the FAA would determine who these persons were, how it would be determined that they materially contributed to a prior revocation, and what process would be afforded them to challenge such determinations. When considering the commenters’ concerns, the FAA noticed that, although FAA certificate actions and civil penalty actions provide for the opportunity for an informal conference with an FAA attorney, that option is not provided to persons who

receive notice of a proposed order under § 13.20. The FAA believes that an amendment to part 13 is necessary to provide the informal conference option to all persons subject to an order issued under § 13.20. This provides a measure of fairness to affected persons, and because matters are sometimes resolved or the issues narrowed at the informal conference stage, this amendment has the potential to conserve resources for both respondents and the FAA.

To respond to those concerns, the FAA is adding a paragraph to the “denial authority” section (§ 145.51(f)) in the Repair Station Final Rule that provides that those persons are subject to an order under the procedures set forth in § 13.20. That section provides for notice and the opportunity for a hearing under subpart D of part 13.

In addition, we are making a minor clarifying change to paragraph (d). The current rule provides that, if a person files a reply, the person may request a hearing as to any charges not dismissed as a result of the agency’s consideration of the reply. We are replacing the word “dismissed” with “withdrawn” because it more accurately reflects the role of the agency prior to a hearing. As provided in § 13.20(f), it is the role of the Hearing Officer at the close of the hearing to either dismiss the notice or issue an order. This change also aligns the agency’s procedures in other enforcement contexts, for example, in civil penalty and certificate action matters.

II. Summary of the Costs and Benefits of the Final Rule

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980

(Public Law 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

The amendment to § 13.20 allows for informal conference with FAA Counsel for those persons subject to orders of compliance, cease and desist orders, orders of denial, and other orders. This amendment parallels due process already afforded to persons of other enforcement actions (i.e. §13.16 and §13.18 - civil penalty actions, and §13.19 -

certificate actions). Since the amendment provides voluntary opportunity for issues to be resolved, or at least narrowed, prior to a formal hearing, a positive net benefit is realized.

Since the expected outcome will be a minimal impact with positive net benefits, a regulatory evaluation was not prepared.

The FAA has, therefore, determined that this final rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, and is not “significant” as defined in DOT's Regulatory Policies and Procedures.

III. Regulatory Notices and Analyses

A. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 96-354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.” To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section

605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule provides a positive net benefit to persons subject to orders the opportunity to have informal conference with FAA Counsel prior to a formal hearing. Thus, this rule affects persons, not small entities.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

B. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it offers the same positive net benefit to all persons regardless of nationality and thus has a neutral trade impact.

C. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$151 million in lieu of \$100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

E. International Compatibility and Cooperation

(1) In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

(2) Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or

prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

F. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in Chapter 3, paragraph 312d and involves no extraordinary circumstances.

IV. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a “significant energy action” under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

V. How to Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet —

1. Search the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visit the FAA's Regulations and Policies Web page at http://www.faa.gov/regulations_policies/ or
3. Access the Government Printing Office's Web page at: <http://www.gpo.gov/fdsys/>.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680.

B. Comments Submitted to the Docket

Comments received may be viewed by going to <http://www.regulations.gov> and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with

questions regarding this document, may contact its local FAA official, or the person listed under the FOR FURTHER INFORMATION CONTACT heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects in 14 CFR Part 13

Administrative practice and procedure, Air transportation, Hazardous materials transportation, Investigations, Law enforcement, Penalties.

The Amendment

In consideration of the foregoing, the Federal Aviation amends Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

1. Revise the authority citation for part 13 to read as follows:

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 106(g), 5121-5128, 40113-40114, 44103-44106, 44701-44703, 44709-44710, 44713, 46101-46111, 46301, 46302 (for a violation of 49 U.S.C. 46504), 46304-46316, 46318, 46501-46502, 46504-46507, 47106, 47107, 47111, 47122, 47306, 47531-47532; 49 CFR 1.47.

2. Amend § 13.20 by revising paragraphs (c) and (d) to read as follows:

13.20 Orders of compliance, cease and desist orders, orders of denial, and other orders

* * * * *

- (c) Within 30 days after service of the notice, the person subject to the order may”
 - (1) Request an opportunity to be heard in an informal conference with an FAA attorney;
 - (2) Reply in writing; or

(3) Request a hearing in accordance with subpart D of this part.

(d) If an informal conference is held or a reply is filed, as to any charges not withdrawn or not subject to a consent order, the person subject to the order may, within 10 days after receipt of notice that the remaining charges are not withdrawn, request a hearing in accordance with subpart D of this part.

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Issued under authority of 49 U.S.C. 106 and 44701 in Washington, DC,
on July 17, 2014.

Michael P. Huerta,
Administrator.

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